

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MARY ADAMS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	1:10-cv-00258-JAW
)	
MAINE MUNICIPAL)	
ASSOCIATION,)	
)	
Defendant.)	

ORDER ON MOTION TO CLARIFY POST ORDER POSITION

As the Plaintiffs do not pursue any federal claims other than the Free Speech Clause claims the Court has already dismissed, the Court dismisses Counts I and II in their entirety and remands the case to the Kennebec County Superior Court.

I. BACKGROUND

In an Order on Motion for Summary Judgment dated February 14, 2013, the Court concluded “that the government speech doctrine applies to prevent the Plaintiffs’ Free Speech Clause claims from going forward against MMA because MMA’s speech was effectively controlled by the government.” *Order on Mot. for Summ. J.*, 48 (ECF No. 71) (*Order*). Based on this conclusion, the Court dismissed Counts I, II, and III of the First Amended Complaint “insofar as those Counts assert claims under the Free Speech Clause of the United States Constitution.” *Id.* at 55.

Only Count III refers specifically to the Free Speech Clause. *First Am. Compl.* ¶ 21 (ECF No. 15). Count I alleges that “MMA contributions to and participation in PACs supporting or opposing Direct Initiatives violate the

individual Plaintiffs’ First and Fourteenth Amendment rights because it is government ‘taking sides’ and conferring an unlawful advantage to one side in the particular initiative question in direct contravention of the nation’s democratic process and contrary to ‘the root philosophy of a republican form of government’ and are ‘direct governmental interference with an initiative.’” *Id.* ¶ 15. Count II alleges that “MMA has violated the individual Plaintiffs’ rights arising under the U.S. Constitution.” *Id.* ¶ 19.

Given the lack of specificity in Counts I and II, and given that MMA’s motion for summary judgment requested judgment only on the government speech doctrine (and on Counts I through IV to the extent appropriate based on the Court’s conclusion on the government speech doctrine), it was unclear whether any federal claims survived the Court’s February 14, 2013 Order. To be sure none did, the Court invited the Plaintiffs to clarify the legal theories behind Counts I and II:

As it appears that the Court’s decision disposes of all of the Plaintiffs’ federal claims, the Court would decline pendent jurisdiction over the state law claims (Counts IV, V, and VI) and would remand the case to the Kennebec County Superior Court. However, out of an abundance of caution, the Court gives the Plaintiffs fourteen days from the date of this Order to inform the Court of their position as to whether any of their federal claims retain vitality. If the Plaintiffs contend that their federal claims remain viable, the Court will set a schedule for the parties to brief the remaining issues.

Order at 53.

On February 28, 2013, the Plaintiffs requested a chambers conference, which the Court conducted by telephone on March 8, 2013. *Notice/Correspondence* (ECF No. 72); *Minute Entry* (ECF No. 74). The Court directed the Plaintiffs to file a written explanation of their position, which they did on March 18, 2013. *Pls.’ Mot.*

to Clarify Post Order Position (ECF No. 76) (*Pls.’ Mot.*). The Maine Municipal Association (MMA) responded on March 25, 2013. *Def. Me. Mun. Ass’n’s Opp’n to Pls.’ Mot. to Clarify Post Order Position* (ECF No. 77) (*Def.’s Opp’n*).

In their motion, the Plaintiffs claim that the Court’s Order was “premature” and “not pursuant to the roadmap laid down by the Court”; the Plaintiffs also accuse MMA of repeatedly violating the Court’s instructions. *Pls.’ Mot.* at 1-7. The Plaintiffs complain that their “federal claims have been summarily dispatched on an incomplete record selected by the MMA.” *Id.* at 7. The Plaintiffs note that the government speech doctrine is “in its infancy,” argue that the “facts of the present case are distinctly non-linear,” and claim that they are “entitled to the benefit of their whole record on the ultimate disposition of the Federal Claims.” *Id.* at 7-8. The Plaintiffs ask for an opportunity to supplement the record. *Id.* at 8-9.

MMA responds that the Plaintiffs’ Motion “is founded on the erroneous premise that MMA was precluded from requesting, and the Court precluded from entering, summary judgment on Counts I through III” and maintains that entering summary judgment for MMA on these Counts is “entirely appropriate.” *Def.’s Opp’n* at 1-2. MMA disputes that the record on which the Court ruled was incomplete and notes that the Plaintiffs were given an opportunity to supplement the record when they responded to MMA’s motion for summary judgment. *Id.* at 2. MMA observes that the government speech question “has been briefed *ad nauseum*” and maintain that “[i]t is time to put an end to this case.” *Id.*

II. DISCUSSION

The Plaintiffs interpreted the Court's invitation to clarify their legal theories as a hedge on its government speech ruling. The Court's invitation was not based on its disquiet with its ruling but on the ambiguity in the Plaintiffs' Complaint. To be clear, the Court's ruling on the government speech doctrine was final and unequivocal: "The Court GRANTS MMA's Motion for Summary Judgment (ECF No. 58) in part in that it concludes that the government speech doctrine applies and DISMISSES Counts I, II, and III of the First Amended Complaint (ECF No. 15) insofar as those Counts assert claims under the Free Speech Clause of the United States Constitution." *Order* at 55. As the Plaintiffs' Motion to Clarify Post Order Position does not mention any federal claim other than the Free Speech Clause claim that has already been dismissed, *Pls.' Mot.* at 1-9, the Court declines to exercise pendent jurisdiction over the remaining state law claims and remands the case to the Kennebec County Superior Court.

The Plaintiffs' complaint that the Court failed to follow its own instructions lacks support. At a conference of counsel on June 22, 2012, the parties and the Court agreed to start with the government speech question and to see what was left following the Court's ruling on that question. *See Pls.' Mot.* at 4; *Tr. of Proceedings* (ECF No. 61) (*June 22 Tr.*). The Court said:

I do think deciding what the entity is and whether the government speech doctrine applies moves the ball significantly down the road, at least past a fork, and after we know which way we're heading, at that point, it may be that there's very little else to do, or there may be something that we haven't considered in light of what I find out when I do the legal research.

Pls.’ Mot. at 4; *June 22 Tr.* at 8:17-23. Plaintiffs’ Counsel agreed that the Court should address both whether MMA is a governmental entity for purposes of the government speech doctrine and whether, in any event, the government speech doctrine would apply based on the fact that MMA’s municipal members created the message and exercised sufficient control over it. *Pls.’ Mot.* at 5-6; *June 22 Tr.* at 11:8-12:20. After clarifying that the Plaintiffs would have an opportunity to add to the record, the Court summarized:

So the two issues, then, will be essentially what is the MMA and whether the MMA as an entity is entitled to invoke government speech doctrine, and then, second, if it is not, whether the municipalities exercised sufficient control over the MMA so that their right to the government speech doctrine is subsumed under the MMA aegis; is that correct?

Pls.’ Mot. at 6; *June 22 Tr.* at 12:24-13:4. Counsel agreed and noted that the disposition would leave “the question of the control of the PACs.” *Pls.’ Mot.* at 6; *June 22 Tr.* at 13:5-13:11.

In accordance with the June 22, 2012 conference, MMA moved

for summary judgment on the issues of: (1) MMA’s government-entity status, and whether MMA is entitled to invoke the government-speech doctrine; and (2) whether the control of municipalities over the message at issue in this case brings MMA’s advocacy activities within the scope of the government-speech doctrine. To the extent the Court deems it appropriate based on its conclusions with respect to (1) and (2), above, MMA further moves for summary judgment in its favor on Counts I through IV of Plaintiffs’ Amended Complaint (Docket No. 15).

Mot. for Summ. J. of Def. Me. Mun. Ass’n, 1 (ECF No. 58). The Plaintiffs responded in opposition and supplemented the record with additional facts. *Pls.’ Resp. in Opp’n to Def. Me. Mun. Ass’n’s Mot. for Summ. J.* (ECF No. 59); *Pls.’ Supplemental Statements of Material Fact in Resp. to the MMA’s Mot. for Summ. J.* (ECF No. 60).

The Plaintiffs’ accusation that MMA’s Counsel “chose to disregard” the Court’s instructions by moving “for judgment on the entirety of the Federal Claims and [by submitting] additional statements of material fact from the existing record *geared not to the MMA’s status as an entity but to the further question of whether the MMA could claim government speech under the particular facts of the case*,” *Pls.’ Mot.* at 6-7 (emphasis in original), finds no support in the transcript of the June 22, 2012 conference.

Presented with MMA’s motion for summary judgment, the Court concluded that “[t]he government speech doctrine applies because MMA’s municipal members—unquestionably government entities—effectively controlled its advocacy activities through its internal governance structures such as the Executive Committee and Legislative Policy Committee.” *Order* at 52. The Court turned to the effect of this conclusion and noted that a finding that the government speech doctrine applies is “another way of saying that MMA has not violated the Plaintiffs’ rights under the Free Speech Clause.” *Id.* The Court thus granted summary judgment for MMA on Counts I, II, and III “insofar as those Counts assert claims under the Free Speech Clause.” *Id.* In accordance with the roadmap agreed to at the June 22, 2012 conference, the Court’s ruling “move[d] the ball significantly down the road” and there seemed to be “very little else to do,” *June 22 Tr.* 8:17-23, but before remanding the case to state court, the Court asked for the Plaintiffs’ position as to whether any federal claims survived the ruling. *Order* at 53.

The Plaintiffs complain that “the Court has chosen to grant judgment for the MMA on the entirety of the Federal Claims,” *Pls.’ Mot.* at 7, but the Order made clear that the Court was granting summary judgment only on the Free Speech Clause claims, and explained that this result was the inescapable corollary of the Court’s conclusion that the government speech doctrine applies. *Order* at 35 (“The government speech doctrine provides that government speech is not restricted by the Free Speech Clause”) (internal punctuation omitted); *id.* at 52 (the Court’s ruling that the government speech doctrine applies “is another way of saying that MMA has not violated the Plaintiffs’ rights under the Free Speech Clause”). To the extent the Plaintiffs complain that “statements of material fact were not included by the MMA in its motion,” *Pls.’ Mot.* at 8, the Plaintiffs had their chance to submit whatever supplemental facts they thought were material to the government speech doctrine. *See Pls.’ Supplemental Statements of Material Fact in Resp. to the MMA’s Mot. for Summ. J.* (ECF No. 60). Moreover, the Plaintiffs do not explain how additional facts would cast doubt on the Court’s conclusions. To the extent the Plaintiffs press arguments about “control of the PACs,” *Pls.’ Mot.* at 8, these arguments are irrelevant since they have not sued the PACs. *See Order* at 48 (“The Court need not consider whether the PACs’ speech is protected by the government speech doctrine, since the First Amended Complaint does not allege that the PACs’ speech has worked any cognizable legal injury to the Plaintiffs”).

III. CONCLUSION

The Court DENIES the Plaintiffs' Motion to Clarify Post Order Position (ECF No. 76). The Court DISMISSES Counts I and II of the First Amended Complaint (ECF No. 15). The Court REMANDS the case to the Kennebec County Superior Court.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 16th day of August, 2013

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